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2007

CLERK

NO_____

In the Supreme Court of the United States

Allen Tyrone Johnson, Petitioner

v.

Theresa Jo Morey, Respondent

On Petition for a Writ of Certiorari

To the Maine Supreme Judicial Court

PETITION FOR A WRIT OF CERTIORARI

Allen Tyrone Johnson, pro se litigant
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QUESTIONS PRESENTED

Maine Rules for Guardian ad Litems and standards of practice for guardian ad Litems in Maine Courts require the guardian to meet and interview with the child separately, be culturally sensitive and complete a thorough investigation. A Caucasian Guardian was appointed to represent a biracial child and apply the best interest of the child statute. When the Guardian was asked if he considered the fact, during his recommendation, that the child was biracial, under oath, R 121, he said "No... The fact that he was biracial didn't enter into my thinking. I cannot imagine why it would." While referring to the child the record shows the Guardian also said, "I can't say I've ever interviewed him in any sense of the word." The Judge concluded the Guardian did a "thorough investigation" and the Supreme Court affirmed the decision. On appeal the court did not consider considering race as a factor that had a physical and psychological well being on the child. In a motion to reconsider, the Court denied the motion. The Questions presented are:

Whether race has a reasonable bearing on the physical and psychological well being of the child in relation to the Best Interest of the Child statute.

Whether the Maine Supreme Court's holding by silence, the necessary inference that black people have no culture, conflicts with other Supreme Courts of Appeals and blatantly departs from Maine Rules For Guardian ad Litems, Standards of Practice for Guardian Ad Litems in Maine Courts and the Best Interest of the Child Statute.

Whether a blatant departure from the fair reading of "culturally sensitivity" and "thorough investigation" occurred when the Maine Supreme Court affirmed the District Court's opinion, which stated the Guardians' investigation was "thorough" even thou the guardian admitted on record that "he never considered the fact the child was biracial" and his report said "I can't say I've ever interviewed him in any sense of the word..."

PARTIES TO THE PROCEEDING

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., infra, 1-2) is reported at Mem 07-32 Som. 06-274. The amended opinion of the district court is (App., infra, 3-7), which is unreported. The original opinion of the district court is (App., infra 8-15), which is unreported. The motion for reconsideration denial letter (App., 16) which is reported at Mem 07-32.

JURISDICTION

The court of appeals' judgment was entered on February 1, 2007. A timely petition for rehearing was denied on February 27, 2007 (App,. Infra 16). A timely request for extension of time to file a petition of certiorari was filed. This courts jurisdiction is invoked under 28 U.S.C. §1257(a).

COSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Maine Title 19-A, §1653, Parental rights and responsibilities

3. Best interest of child. Maine rules for the Guardian ad Litem Rule 1 section B Goals. Standards of Practice For Guardian Ad Litems in Maine Courts Core Obligations of A Guardian Ad Litem.

STATEMENT OF THE CASE

Allen T. Johnson (Petition, African American) and Theresa Morey (Morey, Respondent Caucasian) are the biological parents of Aleksander Johnson (Alek), born on October 30, 2001. A parental rights case was brought against Johnson by Morey in July, 2004. Johnson is African-American, Morey is Caucasian, and the child is bi-racial. The Guardian ad litem, District Court Judge Laverdiere, and Maine Supreme Courts are Caucasian.

In December 2004 a Guardian ad Litem was appointed to represent the best interest of the child. When appointed, the Guardian ad Litem, Wayne Doane, was mandated to interview the child and to follow the Maine Rules for Guardian ad Litems, Standard of Practice for Guardian ad Litems in Maine Courts and the Best Interest of the Child Statute.

The Guardian ad Litem allegedly conducted an investigation and completed a report of his findings which was included as part of the record.

The Guardian ad Litem in fact did not interview the child. The record reflects the Guardian's statement "I can't say I've ever interviewed him in any sense of the word."

The record shows that when the Guardian ad litem was asked if he considered the racial background of the child he responded, "No... The fact that he was biracial didn't enter into my thinking. I cannot imagine why it would." The Guardian Ad Litem was supposed to maintain cultural sensitivity and be culturally sensitive to the social and economic status of the parties.

Connie Young, a Caucasian woman, is part of Johnson's mutual support system for the child when he is in the father's home. She has a black studies degree from Ohio State University. She has a biracial child that frequently interacts with Alek.

The District Judge found the Guardian Ad Litem completed a thorough investigation.

The District Court Judge, Judge Laverdiere ruled that Morey would have primary residence and both parents would have shared parental rights. The Judge based his order on the Guardian ad litem's report. The facts were based primarily on the first 2.5 years of the child's life rather than on the most recent sixteen months. This judgment is in dispute.

"At the time of Alek's birth, Allen refused to acknowledge paternity and to sign the necessary birth certificate record to name him as Alek's father." The record show's that Mr. Johnson requested paternity testing at birth, but the hospital denied his request, therefore this is not a controlling factor.

"Alek lived exclusively with Theresa for the first two and one-half years of his life." This is not a controlling factor since State law reads that "(T)he court may not consider departure from the family residence as a factor in determining parental rights and responsibilities with respect to a minor child...when one parent has left the family residence...at the request or insistence of the other parent. "Title 19-A, M.R.S.A. Sec. 1653(5). There was no contradicted testimony that the Johnson left the residence other than at Morey's request or insistence.

"From the date of Alek's birth through November 30, 2005 (the date of the hearing), Allen has never paid any child support. When requested to provide even temporary,

emergency assistance, even in the form of diapers, he refused." This is not a controlling factor since the State did not provide paternity results to Mr. Johnson until July, 2003. In addition, the record shows that the State of Maine's Department of Health and Human Service told him that until a court order for support was established, he should not pay child support. His legal counsel also verified this. The Court did find that Johnson had been providing for his son fifty percent of the time for the past 15 months.

Johnson appealed the decision with the Maine Supreme Court based on the following:

ISSUE: Was the judgment of the District Court as to primary residence so clearly erroneous as to constitute an abuse of discretion because of:

1. Failure of the Guardian Ad Litem and the Court to consider that the Appellant was an African-American and his son was biracial;

2. Failure of the Guardian Ad Litem to interview the child face to face as ordered by the court and as required by Title 19-A, M.R.S.A. Section 1507(3)(a)(1);

3. The Guardian Ad Litem and the Court gave undue weight to actions of the Appellant during the first 2 ½ years of the child's life rather than focusing on events of the past year.

February 1, 2007 the Maine Supreme Court affirmed the District Court's ruling with a Memorandum of Decision.

Johnson filed a Motion to Reconsider, imploring the Maine Supreme Court to take a position on the racial issues presented. That motion was denied.

THE REASONS WHY THE PETITION SHOULD BE GRANTED

FIRST CONFLICT WITH OTHER COURTS

Maine's Supreme Court's holding by silence, says that race plays no factor whatsoever and has no reasonable bearing on the physical and psychological well being of the child. The Guardian Ad Litems testimony says "the fact that the child was biracial didn't enter into my thinking, I cannot image why it would." Contrast the Guardian Ad Litems testimony to Raysor v Gabbey (1977, 4th Dept) 57 App Div 2d 437, 395 NYS2d 290, "Second, it would seem self-evident that a child of a racially mixed union potentially faces special problems unknown to a child whose parents are both white or both black. Any decision on custody ought to reflect an awareness of the court of [***12] these problems and some consideration by it of which prospective custodian is best able to guide the child, not only for the present, but when she confronts them in the future."

And again in IN Re B. (1977) 89 Misc 2d 493, 391 NYS2d 812. "We must also recognize however, that the power to adjudicate does not carry with it the moral or legal right to superimpose our own values on the lives of [**814] [***8] those before us. We are cognizant that the concept of "Black pride" is an important one; that this child's self-image and acceptance of his Black identity are crucial to his adjustment in life and his place in the world.

The Caucasian Guardian Ad Litem, the Caucasian Judge and the Entire Caucasian Maine Supreme Court superimposed their own values on the life this child. That value they superimposed was that of a white person which failed to reflect awareness by the court that "black pride" and that a

child of a racially mixed union potentially faces special problems unknown to a child whose parents are both black and white.

This type of thinking is exactly why race, cultural, biracial heritage has a reasonable bearing on the physical and psychological well being of the child in the Best Interest Of the Child Statute.

The essence of the following phrase is well known nationwide among Guardians "It is the duty of the Guardian Ad Litem to protect the best interests of the child. As their representative, the Guardian ad Litem is to stand in the shoes of the children and weigh the factors as they would weigh them if their judgment were mature."

In an Article written by Amiee Dolliff from the BANGOR DAILY NEWS, JANUARY 30 2006, she interviews a prominent, Caucasian Guardian Ad Litem who has completed hundreds of child custody cases. In the interview he talks about the importance of culture.

""It's as important for us to be exposed to the culture as it is for Aylee," Wayne Doane of Exeter said about his daughter. Doane and his wife, Sherry, adopted Aylee in 2001".

"At age 5, Aylee now is taking hour-long individual lessons each Saturday in Chinese language and culture from Zhang."

"She can count to 50, write her name in Chinese characters, and Aylee's father said they often find her singing in Chinese while playing."

"It's worked out exactly the way we wanted it to," Doane said, pointing out that in addition to the lessons, Aylee gets

to see a Chinese family interact with one another, "Which we think is critically important to her."

"She also has a close relationship with a lot of the other little girls who have been adopted," Doane said. "There were several local families who adopted children from China around the same time, and the mothers held playgroups for the girls when they were younger." End.

Ironically this supporting article is referring to the same Guardian Ad Litem, Wayne Doane, who testified, "the fact that the child was biracial didn't enter into my thinking, I cannot image why it would."

What appears to be happening is that the Guardian wanted to make it clear that he didn't consider race. The Judge wanted to make it clear the Guardian did a thorough job and the Maine Supreme Court wanted to make clear it that even thou the record clearly reflects the Guardian Ad Litems failure to consider race or even acknowledge it, they will not give any thought whatsoever to the biracial heritage of my child.

SECOND CONFLICT WITH OTHER COURTS

The Guardians first court ordered duty was to interview the child. A Simple undisputed fact is the Guardian Ad Litem made it clear in his report "I can't say I've ever interviewed him in any sense of the word." Although the Guardian had 11 months to interview the child he never did. Then contrast that to M. J. S. H. S. v. YALOBUSHA COUNTY DEPARTMENT OF HUMAN SERVICES *782 So. 2d 737; 2001 Miss. Where* the court stating "P11. The mother argues that as it has been over two years since Davey last interviewed her daughter, it was impossible for him to know the child's current state of mind and whether it would be injurious for Peeples to speak with her. Also, as Davey has

never seen nor interviewed the other two children, the mother claims that Davey was in no position to recommend that Peeples refrain from interviewing these children. As a result, the mother argues that Peeples cannot justify his failure to communicate with the children based upon Davey's recommendation."

"P16. The mother in the case before us appears to be attacking the guardian ad litem's investigatory skills. This assertion does appear to have considerable merit. It is hard for this Court to imagine that a guardian ad litem, without ever visiting the children he/she represents, can be fully informed as to their best interests."

The court found "the Guardian ad Litems failed in his duty to protect the best interest of appellant's three minor children, the court vacated the trial court's judgment and remanded to that court with directions that the guardian ad Litem interview each child and prepare an independent recommendation." End.

In this case the Guardian cannot justify his failure to interview the child by stating, R 129, "Alec, throughout my involvement in this case, has been very difficult to understand," because facts that conflict with that statement are apparent in The Guardians Report where he says "When I saw Theresa on April 27th, she played me a tape of the last drop off. Alek is heard saying, "Don't leave me, Mama."

If the guardian could understand this boy, whom he never communicated with, nor put forth proof that the child heard on the tape was Alek, while the child was allegedly under duress, on April 27 2005, then he should have at least interviewed the child in the following eight month before the trial, but he didn't. Furthermore he never put forth any

evidence that he spoke to either of the child's two speech therapists.

BLATANT DEPARTURE FAR BEYOND THE FAIR READING

In Midstate Siding and Window Company, Inc. Appellant, v. Kenneth Rogers it states, "There is no rule of statutory construction which authorizes the courts to declare that the legislature did not mean what the plain language of the statute says."

In other cases "Words and phrases must not be viewed in isolation but must be considered in light of other relevant provisions of the statute. We also presume that in enacting the statute the legislature did not intend absurdity, inconvenience, or injustice. Where the language of the statute is clear and unambiguous, the only legitimate function of the courts is to enforce the law as enacted by the legislature. It is never proper for the courts to depart from the plain language of the statute by reading into it exceptions, limitations or conditions which conflict with the intent of the legislature."

The Guardian Ad Litem was required to interview the child, maintain the highest standards of professionalism and cultural sensitivity, and be culturally sensitive to the social and economic status of the parties and to complete a thorough investigation. That he did not do.

ISSUE PRESENTED WITH FAIR PRECISION AND IN DUE TIME

In closing arguments respondents attorney argued, R 285, ".... all factors having a reasonable bearing on the psychological well-be--being of the child. And again, I think that's where the issue of bi-racial child becomes a dominant factor in the decision that you make. The psychology of being half black and living with your father who's black and can relate to things that you have to go through, having a bi-racial girl in the same living arrangement and a woman who understands and has her studies, minor degree in black studies, points out that Connie is a person that can do a lot for the psychological well-being of Alex, along with Allen, his father, in the years to come.

IS THIS AREA OF LAW BADLY IN NEED OF THE SUPREME COURTS AUTHORITATIVE VOICE.

Abdu'l-Baha, in The Promulgation of Universal Peace, "A family is a nation in miniature. Simply enlarge the circle of the household, and you have the nation.... The conditions surrounding the family surround the nation. The happenings in the family are the happenings in the life of the nation". Since this nation is diverse and the family unit is the bedrock then it stands to reason race, in all its various forms, must be acknowledged or it will betray itself. By the US Supreme Court not expressing their authoritative voice and by not unifying the courts, America will be turning a blind eye unto herself and will continue to experience a multitude of unforeseen problems now and in future generations.

WHAT WOULD BE THE NATIONAL IMPACT OF LETTING THE LOWER COURTS DECISION STAND?

The nations lower courts will continue to be in disunity, without protocol, and plagued with conflicting interpretations based on opinions from people with, as Justice Ginsburg stated in Gratz v. Bollinger, "Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought," when interpreting race as a factor that will have a reasonable bearing on the physical and psychological well being of the child, in relation to the Best Interest Of the child Statute.

REAL WORLD IMPLICATIONS OF THE DECISION BELOW & PRACTICAL DELIMAS FACED BY THOSE WHO MUST COMPLY WITH A COMPLEX BODY OF LAW

It is incumbent upon the US Supreme Court to secure the rights and freedoms of the Citizens of this Country. This case has painted a picture of how racial discrimination, biases, stereotypes, fears, ignorance, and misunderstandings, whether blatant or unconscious, prevents the minority parent from having a fair and equal investigation, thus preventing and securing the Best Interest of the Child. The Maine Judicial System allowed the veils of their perceptions to blind them of the significance of race and culture, thus preventing them from realistically investigating the Best Interest of the Child.

It behooves the US Supreme Court, to act as a wise, affectionate, and careful parent, and to exercise your supervisory powers to add cultural and other factors of diversity to the Best Interest of the Child Statute, as its own category and not merely to be placed in a miscellaneous

heading. By doing this you will not only simplify this complex body of law but also it will completely eliminate the complexity of the race issue in custody matters by unifying the courts of the nation. It is not enough to just "consider" the fact that a child may be multiracial. An investigator needs to acknowledge the cultural or racial background of the parties involved, and then apply a system of guidelines to the investigators thinking. These guidelines should be a protocol to help the investigator assess and overcome their own racial stereotypes so that they may be enabled to perceive the facts in the light of truth and not be clouded by the veils of prejudice, stereotypes, bigotry, false perceptions and notions of what they 'think' the motives of the parties involved might be.

CONCLUSION

Race has a reasonable bearing on the physical and psychological well being of the child in relation to the Best Interest of the Child statute.

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APPENDIX

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Docket No. Som-06-274
Decision No Mem 07-32
THERESA MOREY
v.
ALLEN T. JOHNSON

Submitted on Briefs January 11, 2007
Decided February 1, 2007
Panel: CLIFFORD, DANA, ALEXANDER, CALKINS, LEVY, and SILVER, JJ.

MEMORANDUM OF DECISION

Allen T. Johnson appeals and Theresa Morey cross-appeals from a judgment entered in the District Court (Skowhegan, LaVerdiere, J.) granting Johnson and Morey shared parental rights and responsibilities of their minor child, and granting primary physical residence of the child to Morey. The court did not abuse its discretion in awarding primary residence to Morey because there is sufficient evidence in the record to support the court's judgment and neither party made a request for additional findings of fact pursuant to M.R. Civ. P. 52(a). See Lyons v. Baptist Sch. of Christian Training, 2002 ME 137, ¶ 13, 804 A.2d 364, 369. We similarly find that there is sufficient evidence to support the court's calculation of child support owed by Johnson to Morey. See id. The court did not abuse its discretion in ordering Johnson to pay the guardian ad litem's fees. See 19-A M.R.S. § 1507(7) (2006); Dolliver v. Dolliver, 2001 ME 144, ¶¶ 1-2, 782 A.2d 316, 316. Contrary to Johnson's contention, the imposition of past child support pursuant to 19-A M.R.S. § 2006(2) (2006), for a period of time when he

was practicing his Baha'i faith does not deny Johnson his constitutional right to freedom of religion because Johnson did not meet his burden of showing that his religious practice was substantially burdened. See Anderson v. Town of Durham, 2006 ME 39, ¶¶ 24-25, 895 A.2d 944, 952. Contrary to Morey's contention on her cross-appeal, the court did not abuse its discretion in declining to amend the order to give her nine consecutive days with the child. See Lee v. Lee, 595 A.2d 408, 412-13 (Me. 1991).

The entry is:
Judgment affirmed.

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App.3

STATE OF MAINE DISTRICT COURT
SOMERSET, SS Skowhegan
Docket No SKODC-FM-04-212

THERESA MOREY, Plaintiff
V.
ALLEN T. JOHNSON,
Defendant-

AMENDED ORDER

On December 7, 2005, the court issued an Order in the above captioned matter, On December 19, 2006, the Plaintiff flied a Motion to Alter or Amend that Order pursuant to Rule 59, M.R.Civ P.. On December 21, 2006, the Defendant filed a request for Further Findings of Fact and Conclusions of Law, which request was denied by the court on that same day. On February 2, 2006, the Defendant filed a Motion to Alter or Amend, or in the Alternative, a Motion for Relief from Order. The court conducted a telephonic conference with the parties on March 13, 2006 regarding both pending Motions- The court orally ruled that it would not entertain any consideration of any events that occurred since the date of the Order, but would entertain written arguments from the parties on three specific matters that the court agreed were not sufficiently clear in the original order, which, in part, read as follows:

"D. The primary physical residence of the children is awarded to Theresa Morey. Allen Johnson is granted the right of contact with said child as follows:
a. The first, second and third weekend of each month from Friday at 3:00PM to Sunday at 7:00 PM.
b. Every Wednesday evening from 3:00 PM to 7:00 PM.
c. Two full weeks during the summer.
d. As long as it did not interfere with Alek's preschool or school, AND not more than once per year, in the event that

either parent has a special event scheduled that would not last more than 7 consecutive days, either in-state or out-of-state, that parent may notify the other parent, in writing, of his/her desire to have Alek with them for that time period. Alek's ability to go with the requesting parent shall not be unreasonably withheld.

E Holiday visitation between the parties and Alek shall be shared by agreement."

In particular, the court requested arguments on the following:
a. Whether or not the two full weeks during the summer were to be consecutive.
b. The terms and conditions of the 7 day period described in Paragraph 0, (d) of the original Order
c. The specifics of the Holiday visitation schedule.

Based upon the testimony and evidence at the original hearing, and based upon the written arguments submitted by counsel, the court hereby **ORDERS:**

That the Defendant's Motion filed February 2,2006 is **DENIED** and **DISMISSED** for failure to comply with the time limits in Rule 59 (e), and because the reasons cited in said Motion do not rise to the level necessary under Rule 60 (b).

That the Plaintiff' s Motion filed December 19, 2005 is **GRANTED IN PART** and **DENIED IN PART**. To the extent that the Motion is granted, the court hereby **AMENDS** the original Order, and **IT IS HEREBY ORDERED THAT:**

Paragraphs D and E of the original Order are hereby deleted and are replaced with the following:

D. The primary physical residence of the children is awarded to Theresa Morey. Allen Johnson is granted the right of contact with said child as follows:

a. The first, second and third weekend of each month from Friday at 3:00PM to Sunday at 7:00 PM.

b. Every Wednesday evening from 3:00PM to 7:00 PM.

c. Two non-consecutive weeks during the summers of 2006, 2007, 2008. Beginning during the summer of 2009, the two weeks shall, at the option of the Defendant, be consecutive. Under no circumstances shall the summer vacation weeks outlined herein cause the Plaintiff to lose the one weekend per month set aside to her by virtue of sub-paragraph (a) above.

d. As long as it does not interfere with Alek's attendance at preschool or school, AND not more than once per year, if the Defendant has a special event scheduled that would not last more than 9 consecutive days, either in-state or out-of-state, he may notifi the Plaintiff of his desire to have Alek with them for that time period. Unless for good cause shown or by agreement of the parties, the aforesaid notice shall be in writing and given at least 30 days in advance. Alek's ability to go with the Defendant shall not be unreasonably withheld. This paragraph is intended to allow Alek to be away from the Plaintiff for no more than 9 consecutive days, once per year for special events. The 9 consecutive days allowed herein includes any time the Defendant is already entitled to be with Alek pursuant to this Order, and is not to be used in any manner which results in Alek being away from the Plaintiff for more than 9 consecutive days. More specifically, but not in limitation thereof, the time allowed by this paragraph is not to be combined with any vacation or holidays in such a

manner as to keep Alek away from Plaintiff for more than 9 consecutive days

e Approximately four times each. year there are five weekends in. the month. In 2006, those months are April, July, September, and December. The parties shall alternate having Alek during the fifth weekend of the month such that each year, the first and third "fifth weekend" (in 2006, that would be April and September) the Plaintiff will have him and in the second and fourth "fifth weekend" (in 2006, that would be July and December) the Defendant will have him- For purposes of this paragraph, a "fifth weekend" is defined as any weekend containing a fifth Saturday of any month.

f Each parent is required herein to provide the other parent with a phone number where Alek can be reached at all times.

E. Holiday visitation between the parties and Alek shall be as follows:

a. The Plaintiff shall have Alek with her on the following holidays during **even numbered years**. and the Defendant shall have Alek with him on the same holidays during **odd numbered years,** this schedule to begin in
2006;
1. Christmas Eve day
2. Thanksgiving day
3. Halloween day
4 Memorial day

b. The Defendant shall have Alek with him on the following holidays
during **even numbered years** a and the Plaintiff shall have Alek with her on the ame holidays during **odd numbered years,** 'this schedule to begin in 2006;

I. Christmas day
2. Independence day
3. Martin Luther King day
4. Labor day

c. The Defendant shall, within 30 days of this Amended Order, make a one-time designation of two Baha'i holidays/holy days. Beginning in 2006, Alek will spend the first designated day (not to interfere with, any mandatory school attendance) with, the Defendant and the second designated day (not to interfere with any mandatory school attendance) with the Plaintiff. These two holidays/holy days shall be alternated on an annual basis such that the Defendant will have the first designated day and the Plaintiff will have the second designated day in even numbered years, and the Plaintiff will have the first designated day and the Defendant will have the second designated day in odd numbered years.

For purposes of Paragraph F, herein, each "day" shall commence at 8:00 AM and end at 8:00 PM The aforesaid holiday schedule shall take precedence over any regularly scheduled times allocated herein.

In all other respects, the findings and Order dated December 7, 2005 shall remain in full force and effect and is reaffirmed as if fully set forth herein.

The Clerk is directed to incorporate this Amended Order into the docket by reference.
Dated: April 5, 2006
JUDGE, MAINE DISTRICT COURT.

STATE OF MAINE DISTRICT COURT
SOMERSET, SS. Skowhegan
Docket No. SKODC-FM-04-212

THERESA MOREY,
Plaintiff,
v.
ALLEN T. JOHNSON,
Defendant.

ORDER

A hearing was held on Plaintiffs Complaint for Determination of Paternity, Parental Rights and Responsibilities, Child Support, on November 30, 2005. The Plaintiff was present, represented by Anthony Shusta, Esq., and the Defendant was present, represented by Richard Rhoda, Esq. Also present for-a portions of the hearing were Maeghan Maloney, Esq. for the Maine Department of Health and Human Services, and Wayne Doane, Esq. the Guardian ad litem.

Pursuant to the testimony given at the hearing, the court finds as follows:

Allen T. Johnson (Allen) and Theresa Morey (Theresa) are the biological parents of Aleksander Johnson (Alek), born on October 30, 2001. At the time of Alek's birth, Allen refused to acknowledge paternity and to sign the necessary birth certificate records to name him as Alek' s father.

Alek lived exclusively with Theresa for the first two and one-half years of his life. During that time, Allen made no serious effort to have contact with Alek, and, in fact, had no contact with Alek until he was over two and one-half years old.

From the date of Alek's birth through November 30, 2005 (the date of the hearing), Allen has never paid any child support. When requested to provide even temporary, emergency assistance, even in the form of diapers, he refused.

In June 2004, Allen came to Maine and took Alek from Theresa's sister who was caring for him while Theresa was recovering from a drug overdose. Allen took Alek to Kansas City for two weeks.

Upon return to Maine, Allen filed a Protection from Abuse Complaint against Theresa. Based upon the allegations made by Allen, the court granted a temporary order, and Allen kept Alek away from his mother until she agreed to an Interim Order signed by the court on August 9, 2004.

The Interim Order provides that Allen and Theresa will share Alek equally. 'The schedule used by the parties from August 2004 to the present provides for Alek to be transported between parents every four days. Thus each parent has Alek for four consecutive days before he is transported to the other parent's home.

In 2004, Mark Perkins, a friend of Allen, purchased a three-apartment unit house for Allen in Houlton Maine. Allen and his "business partner", Connie Young, together with her two children, occupy two of those apartment units. The remaining apartment is rented out for $400.00 per month. Allen states that he intends to move at some time in the future to a location closer to Connie Young's job in Orono, Maine.

Theresa lives in a mobile home in Madison, Maine. She has sporadically shared this residence with her sometimes boyfriend! "fiancé", Ben Alley.

In order to comply with the current residential schedule, Alek, who is now four years old, must travel three and one half hours each way between Madison and Houlton. He is currently spending 25 to 28 or more hours each month in vehicles, being transported between residences.

A Guardian ad litem (GAL), Wayne Doane, was appointed in this case to assess the needs of the child and to make recommendations to the court regarding the best interest of the child.

Afler a thorough investigation, the GAL noted that the current travel arrangements were too much for a four year old to handle. In addition, since Alek will soon start preschool and eventually kindergarten, the current arrangements will not be possible in the future.

The GAL recommended that the parties have Shared Parental Rights and Responsibilities, with Theresa having Primary Residence. He recommended that Allen have contact with Alek three of every four weekends per month.

The court has reviewed all of the factors required by 19-A M.R.S.A. § 1653 (3). In particular, the court relies on § 1653 (3), (A), (B), (D), (E), (G), and (N). The court finds that those factors apply as follows:

(A). The age of the Child. The child is now four years old and will soon be entering preschool and kindergarten. In order to do so, he must be able to attend the same school each day. In addition, although some travel time can be made

into quality time with the parent, 25 to 28 or more hours per month on the road is too much for a child of this age.

(B). The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare. While Allen has, within the last year, developed an apparently good relationship with Alek, Theresa has been the primary caregiver since birth. The relationship between Theresa and Alek is strong.

D). The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity. Alek has lived exclusively with Theresa for nearly two-thirds of his life. Since Allen has come into Alek's life, he has spent 50% of his time with each parent. Once he starts school, he will need to attend the same school each day. It is in the best interest of Alek to begin now to establish a routine that can be continued throughout his school years.

(E). The stability of any proposed living arrangements for the child. The current traveling arrangements are not good for Alek. Traveling back and forth to Aroostook County in all kinds of weather every four days is dangerous and tiring. Alek has lived exclusively with Theresa and his half-brother Josiah for most of his life. While Allen has now successfully become a part of Alek's life, and it is important that he remain a vital part of Alek's life, the shared living arrangements proposed by Allen do not promote stability. The arrangements proposed by the GAL seem to be more likely to achieve the desired stability.

(G). The child's adjustment to the child's present home, school and community As noted above, Alek was adjusted to his home with Theresa. When Allen came to Maine and took two and one-half year old Alek to Kansas City, Alek was forced to adjust. Once the four day on, four day off schedule

was implemented, Alek was again forced to adjust. Soon Alek will start school. This will require more adjustment by Alek. The likelihood of a successful transition and adjustment to attendance at school will be enhanced by adoption of the GAL's recommendations.

(N'). All other factors having a reasonable bearing on the physical and psychological well-being of the child. Alek has lived through some extraordinary transitions. He has gone from living exclusively with his mother and not even knowing his father to living for several weeks exclusively with his father, to living four days at a time with each parent. He has done remarkably well. However, as he gets older, continues his closeness with his half-brother, develops friendships with other children, and transitions to school, he needs stability and continuity. While Allen has much to offer Alek, and his presence in Alek's life has been and will continue to be a good thing, the recommendations of the GAL seem to offer the best means for Alek to achieve that stability and continuity.

THEREFORE, the court ORDERS as follows:

PARENTAL RIGHTS AND RESPONSIBILITIES

A. It is hereby ORDERED and ADJUDGED that the parties shall have shared parental rights and responsibilities concerning Aleksander Johnson, born October 30, 2001.

While the court is aware that each party requests the court to allocate rights regarding Medical decisions to him or her, the court declines to do so at this time.

B. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents confer and make joint decisions regarding the child's

welfare. Matters pertaining to the child's welfare include, but are not limited to, education, religious upbringing, medical, dental, and mental health care, travel arrangements, child care arrangements, and residence. Parents who share parental rights and responsibilities shall keep one another informed of any major changes affecting the child's welfare and shall consult in advance to the extent practicable on decisions related to the child's welfare.

C. Both parties will have access to all records regarding the parties' minor child, including, but not limited to, scholastic, medical, hospital, dental, optical and all other records.

D. The primary physical residence of the children is awarded to Theresa Morey. Allen Johnson is granted the right of contact with said child as follows:
a. The first, second and third weekend of each month from Friday at 3:00PM to Sunday at 7:00 PM.
b. Every Wednesday evening from 3:00 PMto 7:00 PM.
c. Two full weeks during the summer.
d. As long as it did not interfere with Alek's preschool or school, AND not more than once per year, in the event that either parent has a special event scheduled that would not last more than 7 consecutive days, either in-state or out-of-state, that parent may' notify the other parent, in writing, of his/her desire to have Alek with them for that time period. Alek's ability to go with the requesting parent shall not be unreasonably withheld.

E. Holiday visitation between the parties and Alek shall be shared by agreement.

F. Violation of this order may result in a finding of contempt and imposition of sanctions, pursuant to 19-A MRSA, Section 1653(7), which may include one or more of the following: (1) require additional or more specific terms and

conditions consistent with this order; (2) order that additional visitation be provided for a parent to take the place of visitation that was wrongfully denied; and (3) order a parent found in contempt to pay a forfeiture of at least $100.00.

G. At least 30 days before the intended relocation of a child by a parent having been awarded shared parental rights and responsibilities or allocated parental rights and responsibilities, the parent shall provide notice to the other parent of the intended relocation. [f the relocation must occur in less than 30 days, the parent who is relocating shall provide notice as soon as possible to the other parent. If the parent who is relocating believes notifying the other parent will cause danger to the child, the parent shall notify the District Court of the intended relocation and the District Court shall provide appropriate notice to the other parent in a manner determined to provide safety to the relocating parent and child.

CHILD SUPPORT

A. Pursuant to 19-A M.R.S.A., §2006, the Court has made certain findings of fact concerning the current parental support obligations as computed under the presumptive application of the guidelines. Allen Johnson's income from the date of the hearing forward is based on an imputation of minimum wage income, plus sales of his music, plus income from the rental unit in Houlton, Maine. Theresa Morey' s income is based on an imputation of minimum wage income.

B. The Child Support Order attached hereto is incorporated herein by reference.

TRANSPORTATION

Allen Johnson shall be responsible for all transportation to and from any visits with or by Alek.

ATTORNEYS FEES

Each party shall be responsible for his or her own attorney's fees. Allen Johnson shall pay any amount due to the GAL.

The Clerk is directed to incorporate this Order into the docket by reference.

Dated: December 7, 2005
JUDGE, MAINE DIS
CT COURT

STATE OF MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court

DOCKET NO. Som-06-274
Decision No. Men- 07-32

THERESA MOREY
V.
ALLEN T. JOHNSON

ORDER

Upon motion for reconsideration of appellant,
Allen T. Johnson, it is ORDERED that the motion be, and it hereby is, DENIED
Dated: February 27, 2007

Robert W. Clifford
Associate Justice